

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Request of Limited Modification of)
LATA Boundaries to Provide ELCS)
Between the Alba)
Exchange and the Mineola)
Exchange.)

96-159

DOCKET FILE COPY ORIGINAL
DOCKET FILE COPY ORIGINAL

PETITION

I. INTRODUCTION

Southwestern Bell Telephone Company (SWBT), pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ and in accordance with the guidelines established in the Commission's Memorandum Opinion and Order (MO&O) released July 15, 1997 in CC Docket No. 96-159,² hereby makes application for a limited modification of LATA boundaries to provide ELCS between the Alba exchange and the Mineola exchange.

II. SUPPORTING INFORMATION

As prescribed in paragraph 23 of the aforementioned Commission MO&O, SWBT provides the following information in support of its application:

1. Type of service: Flat-rate, non-optional Expanded Local Calling (ELC);
2. Direction of service: Two-way;

No. of Copies rec'd 074
List ABCDE

¹ The Communications Act of 1934, as amended, 47 U.S.C. *et al.*

² Memorandum Opinion and Order, Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations, CC Docket No. 96-159, released July 15, 1997. By way of this MO&O the Commission adopted a format for and criteria under which such petitions would be

3. Exchanges involved: Alba in the Dallas, TX LATA and Mineola in the Longview LATA;
4. Name of carriers: Alba of Contel/GTE Southwest, Inc. and Mineola of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Alba exchange has 1,231 access lines, and the Mineola exchange has 5,385 access lines;
7. Usage data: Usage data is not available to Southwestern Bell Telephone. SWBT does not currently carry traffic across LATA boundaries;
8. Poll results: Percentage of Alba customers returning ballots who voted in favor of ELC to Mineola: 81.70. Where SWBT is the petitioning exchange, there is no proposed rate increase. Where SWBT is not the petitioning exchange, SWBT does not have information as to any proposed rate increase.
9. Community of interest statement: The Public Utility Commission of Texas includes a Community of Interest Finding in their Order(s). See Attachment A.
10. Map: See Attachment B; and,
11. Other pertinent information: None

III. *PRIMA FACIE* SHOWING

SWBT believes that it has made a *prima facie* case supporting grant of the proposed modification because the instant ELCS petition (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rate, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results and descriptions of the communities involved; and, (5) involves a limited number of customers or

access lines. These requirements for a *prima facie* case are detailed in the aforementioned Commission MO&O paragraph 24.

IV. CONCLUSION

Wherefore, SWBT request that the Commission approve its application for a limited modification of LATA boundaries to provide ELCS between the Alba exchange and the Mineola exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Marjorie Morris Weisman

Robert M. Lynch

Durward D. Dupre

Mary W. Marks

Marjorie M. Weisman

Attorneys for

Southwestern Bell Telephone Company

One Bell Center, Room 3520

St. Louis, Missouri 63101

(314) 235-2507

AUGUST 29, 1997

DOCKET NO. 13324

SHEET 1

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE JARRELL §
EXCHANGE TO THE EXCHANGE OF § OF TEXAS
BARTLETT §

ORDER NO. 9

DOCKET NO. 13435

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE ALBA §
EXCHANGE TO THE EXCHANGE OF § OF TEXAS
MINEOLA §

ORDER NO. 8

DOCKET NO. 13486

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE BOGATA §
EXCHANGE TO THE EXCHANGE OF § OF TEXAS
MT. PLEASANT §

ORDER NO. 9

DOCKET NO. 13498

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALING SERVICE FROM THE §
BROWNSBORO-EDOM EXCHANGE TO THE § OF TEXAS
EXCHANGES OF LINDALE, MINEOLA, §
OWENTOWN AND TYLER §

ORDER NO. 10

DOCKET NO. 13556

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE CHESTER §
EXCHANGE TO THE EXCHANGE OF § STATE OF TEXAS
WOODVILLE §

ORDER NO. 7

RECEIVED
97 JUL 30 PM 3:29
PUBLIC UTILITY COMMISSION
FILING CLERK

DOCKET NO. 13324
DOCKET NO. 13435
DOCKET NO. 13486
DOCKET NO. 13498
DOCKET NO. 13556
DOCKET NO. 13649

ORDER NO. 9
ORDER NO. 8
ORDER NO. 9
ORDER NO. 10
ORDER NO. 7
ORDER NO. 10

ATTACHMENT A
SHEET 2

DOCKET NO. 13649

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE FROST	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
HILLSBORO	§	

ORDER NO. 10
UNABATING AND DIRECTING LOCAL EXCHANGE COMPANY
TO FILE FOR LIMITED MODIFICATION

On July 28, 1997, the Commission Staff recommended that, in light of the recent Federal Communications Commission (FCC) order addressing the procedures for Southwestern Bell Telephone Company (SWBT) to request limited modifications of local access and transport area (LATA) boundaries for the provision of expanded local calling service (ELCS), that these applications be unabated. A community of interest has previously been established in these cases and a waiver request was filed by SWBT with the Department of Justice under the *Modified Final Judgment*. Therefore, these applications are unabated.

Within thirty days of the effective date of this order, SWBT shall file a request for limited modification of the LATA boundary in accordance with the procedures outlined *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, FCC 97-244, (rel. July 15, 1997) *Memorandum Opinion and Order*, §§ 23 & 24.

DOCKET NO. 13324
DOCKET NO. 13435
DOCKET NO. 13486
DOCKET NO. 13498
DOCKET NO. 13556
DOCKET NO. 13649

ORDER NO. 9
ORDER NO. 8
ORDER NO. 9
ORDER NO. 10
ORDER NO. 7
ORDER NO. 10

ATTACHMENT A
SHEET 3

Additionally, within 10 days of the receipt of orders or notices from the FCC relating to these petitions, SWBT shall file such orders or notices with the Commission.



ISSUED BY THE OFFICE OF POLICY DEVELOPMENT
ON BEHALF OF THE PUBLIC UTILITY COMMISSION OF TEXAS
ON THE 30th DAY OF JULY, 1997

q:\share\elcs\lata2.doc

DOCKET NO. 13435

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
ALBA EXCHANGE TO THE
MINEOLA, QUITMAN, GOLDEN,
AND DRY CREEK EXCHANGES

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER NO. 7
ORDER OF SEVERANCE

PROJECT NO. 14790

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE ALBA
EXCHANGE TO THE QUITMAN,
GOLDEN, AND DRY CREEK EXCHANGES

ORDER NO. 1

ESTABLISHING PROJECT AND PROCEDURAL SCHEDULE

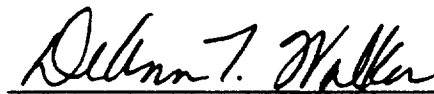
On April 4, 1994, a petition for expanded local calling service (ELCS) from the Alba Exchange to the Mineola, Quitman, Golden, and Dry Creek Exchanges was filed pursuant to P.U.C. SUBST. R. 23.49(c). The petition was assigned Project No. 12906. The Alba Exchange is in the Dallas Local Access and Transport Area (LATA) and the Mineola, Quitman, Golden, and Dry Creek Exchanges are in the Longview LATA. Federal court orders prohibit Southwestern Bell Telephone Company (SWB) and GTE Southwest, Inc. (GTE) from providing service across the LATA boundary. Consequently, on September 15, 1994, Order No. 1 docketed this petition so that the Commission could formally process the interLATA petition and issue an interim order to allow SWB and GTE to seek waivers from Judge Harold H. Greene.

On July 4, 1995, an interim order of the Commission became effective that a community of interest existed between the exchanges and directed GTE and SWB to seek a waiver from Judge Greene. On September 8, 1995, Judge Greene issued an order that permits GTE to carry traffic between the exchanges. Judge Greene has not yet granted SWB's request as to the Mineola Exchange.

In order to process the portion of this petition that has been granted a waiver, the request for ELCS from the Alba Exchange to the Quitman, Golden, and Dry Creek Exchanges is **SEVERED** from Docket No. 13435. It shall be processed as Project No. 14790 captioned *Petition for Expanded Local Calling Service from the Alba Exchange to the Quitman, Golden, and Dry Creek Exchanges*. The attached procedural schedule establishes the relevant deadlines for this project.

SIGNED AT AUSTIN, TEXAS the 2nd day of October, 1995.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

DOCKET NO. 13435

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
ALBA EXCHANGE TO THE
MINEOLA, QUITMAN, GOLDEN
AND DRY CREEK EXCHANGES

§ PUBLIC UTILITY COMMISSION
§
§
§ OF TEXAS
§
§

INTERIM ORDER

On behalf of the Public Utility Commission of Texas (Commission) the Administrative Law Judge (ALJ) finds that this docket is based on a evidentiary record and has been processed in accordance with applicable statutes and Commission rules. There were no disputed issues in this petition.

The following findings of fact and conclusions of law are **ADOPTED**:

Findings of Fact

1. The expanded toll-free local calling service (ELCS) petition that is the subject of this Interim Order request non-optional "to and from calling" from the Alba Exchange to the Mineola, Quitman, Golden, and Dry Creek Exchanges.
2. The processes for petitioning and balloting included notice that the service would have a fee of up to \$3.50 for residential and \$7.00 for business customers on a non-optional basis.
3. Judge Harold H. Greene established the LATA boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Cas (CCH) §66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)
4. A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from

providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene.

5. Judge Greene has relied upon the following issues for SWB or GTE to obtain a waiver of the MFJ: impact on competition; whether the calling plan has the attributes of a long distance toll call; and whether a community of interest exist between the two exchanges.

6. On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Act of May 11, 1993, 73rd Leg. R.S., ch.271, 1993 Tex. Sess. Law Serv. 1276 (Vernon)(to be codified as an amendment to TEX. REV. CIV. STAT. ANN., Art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.

7. The statute and the rule referred to in Finding of Fact No. 6 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.

8. In recommending approval of various waivers before Judge Greene, the Department of Justice (DOJ) has relied upon an affirmative finding of the Public Utility Commission of Texas that a community of interest exists between two exchanges, often based on a vote of the responding subscribers, and whether the two exchanges share such needs as local governments; employment; shopping; and use of educational and medical services.

9. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. The percentage of affirmative votes from those subscribers returning ballots is a compelling showing of a community of interest. This factor is considered along with other factors, such as the sharing of local government, schools, employment, and commercial centers.

10. On April 4, 1994, the Alba Exchange filed a petition for ELCS between it and the exchanges of Mineola, Quitman, Golden, and Dry Creek, among other exchanges. The requests for service to the

Mineola, Quitman, Golden, and Dry Creek Exchanges were severed because they involved interLATA issues.

11. The Alba Exchange has approximately 1,300 subscribers, is served by Contel of Texas, Inc. (Contel), and is in the Dallas LATA. The Mineola Exchange is served by SWB, and is in the Longview LATA. The Quitman Exchange is served by GTE, and is in the Longview LATA. The Golden and Dry Creek Exchanges are served by People's Telephone Cooperative, Inc., and are in the Longview LATA.

12. The parties to the proceeding are the petitioning Alba Exchange, SWB, GTE, People's Telephone Cooperative, Inc., and General Counsel. A hearing on the merits was not held because there are no contested issues. There is no statutory deadline for this proceeding.

13. The Alba Exchange is contiguous with the Golden and Dry Creek Exchanges; thus, there is a *per se* community of interest between these exchanges. The Alba Exchange is within 22 miles of the Mineola and Quitman Exchanges.

14. An affirmative vote of 81.7 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Alba Exchange to the Mineola Exchange. An affirmative vote of 81.1 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Alba Exchange to the Quitman Exchange. An affirmative vote of 70.4 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Alba Exchange to the Dry Creek Exchange. An affirmative vote of 80.5 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Alba Exchange to the Golden Exchange.

15. The residents of the Alba Exchange reside within the Alba-Golden Independent School District. All of the schools in the district are located within the Golden Exchange. Approximately 45 percent of the students in the Alba-Golden school district reside within the Alba Exchange. Thus, students, teachers, and parents are required to call long distance to discuss education matters.

16. Alba is a community of approximately 550 residents. Few businesses are located within the Alba Exchange. Most of the residents of the Alba Exchange are lifetime residents, and many are senior

citizens. The necessity to make toll calls to contact doctors, dentists, churches, stores, and friends is a hardship.

17. There are no practicing physicians, dentist, medical clinics, hospitals, or pharmacies in the Alba Exchange. The closest medical facilities are located in the Mineola and Quitman Exchanges.

18. A large portion of the Alba Exchange is located within Wood County, and Quitman is the county seat of Wood County. Thus, the local government for many citizens within the Alba Exchange is located in the Quitman Exchange. In addition, Alba residents must make inter-LATA calls to contact their County representatives.

19. Approximately 95 percent of the citizens of the Alba Exchange are employed outside of the LATA boundary. Their employment is located within the inter-LATA exchanges of Mineola, Quitman, Dry Creek, and Golden. There are no businesses with facilities in the Alba Exchange.

20. The citizens within the Alba Exchange depend on churches located in the Mineola, Quitman, Golden, and Dry Creek Exchanges.

21. There are no major grocery stores or discount stores in the Alba Exchange. The residents of the Alba Exchange rely upon the Mineola and Quitman Exchanges for its commercial needs.

22. There is a community of interest between the Alba Exchange and the Mineola Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Mineola Exchange in the following ways: affirmative vote of the subscribers returning ballots; common utilization as commercial center and employment center; common reliance upon hospital and medical providers; and common utilization of religious institutions.

23. There is a community of interest between the Alba Exchange and the Quitman Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Mineola Exchange in the following ways: affirmative vote of the subscribers returning ballots;

commonality of local government; common utilization as commercial center and employment center; common reliance upon hospital and medical providers; and common utilization of religious institutions.

24. There is a community of interest between the Alba Exchange and the Dry Creek Exchange. The exchanges are contiguous to each other. In addition, the petitioners proved a community of interest with the Dry Creek Exchange in the following ways: affirmative vote of the subscribers returning ballots; common utilization as an employment center; and, common utilization of religious institutions.

25. There is a community of interest between the Alba Exchange and the Golden Exchange. The exchanges are contiguous to each other. In addition, the petitioners proved a community of interest with the Golden Exchange in the following ways: affirmative vote of the subscribers returning ballots; common utilization as an employment center; commonality of school districts; and, common utilization of religious institutions.

26. No issues of law or fact are disputed by any party.

27. No hearing on the merits or Commission action is necessary and administrative review is warranted.

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act of 1995, S.B. 319, §§ 1.101, 3.051, 3.151, 3.155, 2.201, 3.251, and 3.304, 74th Leg., R.S. 1995.
2. The standards for community of interest for ELCS in Texas are established in § 3.304(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).
3. Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.

DOCKET NO. 13435

INTERIM ORDER

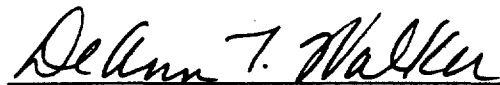
4. To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 3.304(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact No. 13, the petitioning exchange satisfies the requirement.
5. P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
6. An ELCS docket that has the two exchanges within 22 miles of each other or which are contiguous to each other constitutes a *per se* showing of community of interest. Judge Greene, however, considers other factors showing a community of interest in order to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.
7. A community of interest standard similar to P.U.C. SUBST. R. 23.49(b)(2) is not applicable to proceedings involving ELCS.
8. The standards contained within § 3.304(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 3.304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange.
10. This petition does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.

11. All requirements for administrative review under P.U.C. PROC. R. 22.32(a) have been satisfied; therefore, the proposed petition may be approved by a Hearings Officer under the administrative review provisions of P.U.C. PROC. R. 22.32 as authorized by § 1.101(d) of PURA.

In accordance with the findings of fact and conclusions of law, the Commission issues the following Interim Order:

1. The petitioners in the petition filed by the Alba Exchange for expanded local calling service to the Mineola, Quitman, Dry Creek, and Golden Exchanges have shown a community of interest between the exchanges.
2. Within thirty (30) days of this Interim Order, Southwestern Bell Telephone Company (SWB) and GTE Southwest, Inc. (GTE) are **DIRECTED** to file a request for a waiver of the Modified Final Judgment with the Department of Justice or Judge Harold H. Greene, as appropriate.
3. Within thirty (30) days of the receipt of the ruling by Judge Greene, SWB and GTE are **DIRECTED** to file Judge Greene's judgment in this docket.
4. This Interim Order is effective August 4, 1995.

Respectfully submitted,



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

APPROVED this 14th day of July 1995.

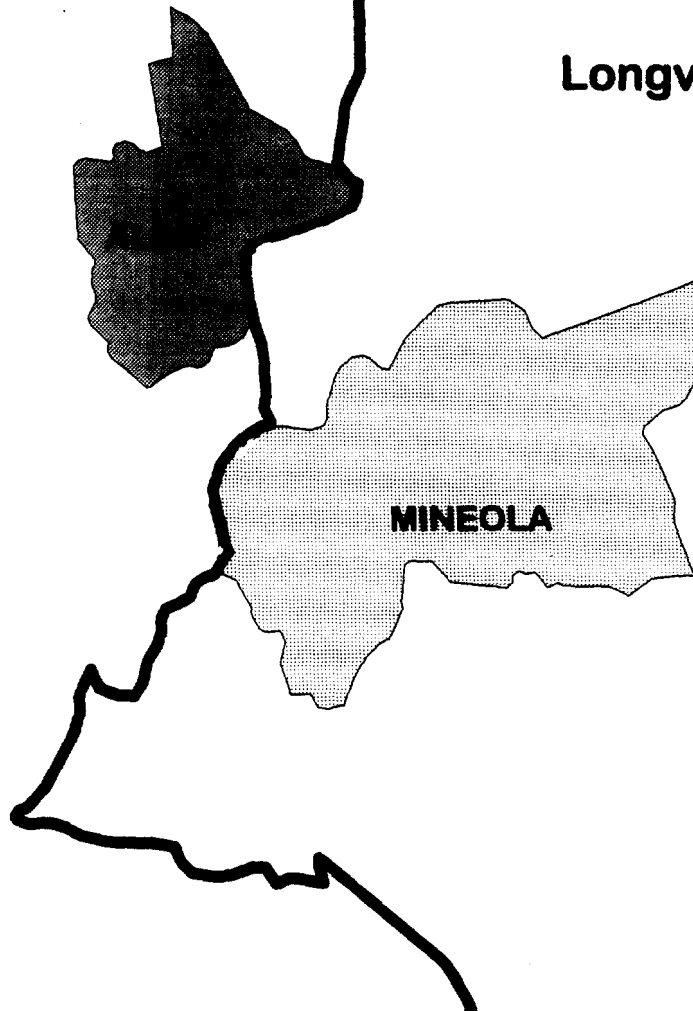


AMALIYA J. HODGINS
ACTING DIRECTOR OF HEARINGS

Alba To Mineola

**Dallas LATA
552**

**Longview LATA
554**

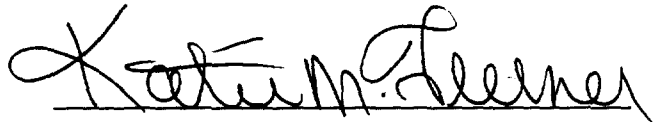


6 0 6 12 Miles

-  GTE/Contel Southwest Inc. Exchange
-  Southwestern Bell Telephone Exchange

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY" in Docket No. 96-159 has been filed this 29th day of August, 1997 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", written over a horizontal line.

Katie M. Turner

August 29, 1997

Texas Public Utility Commission
1701 North Congress
Austin, Texas 78701